

## REMARKS

Claims 1-27 are pending in the application. No claims have been amended, cancelled, or newly added. In view of the following Remarks, allowance of all the pending claims is requested.

### REJECTION UNDER 35 U.S.C. § 103

The Examiner has rejected claims 1-27 under 35 U.S.C. § 103 as allegedly being unpatentable over U.S. Patent No. 6,816,898 to Scarpelli et al. ("Scarpelli") in view of U.S. Patent No. 6,842,781 to Lavian et al. ("Lavian"). Applicants traverse this rejection because the Examiner has failed to establish a *prima facie* case of obviousness, for at least the reason that the references relied upon, either alone or in combination, do not teach or suggest every feature of the claimed invention.

More particularly, Scarpelli and Lavian, either alone or in combination, fail to teach or suggest at least the feature of "instantiating an agent object . . . , the instantiated agent object operable to monitor hardware characteristics of the network device," as recited in claim 1, for example. The Examiner alleges that Scarpelli teaches this feature at col. 7, lines 22-27; and col. 8, lines 55-67. Applicants disagree with the Examiner's assessment.

Scarpelli relates to running script-based programs to collect data from a network (col. 7, lines 28-30, "Network monitor 150 collects meta data and data defined by the script-based programs from the network"). However, the execution of a script, as disclosed by Scarpelli, is distinct from "instantiating an agent object" for at least the reason that scripts, such as shell scripts written in PERL, are not object-oriented program structures.

Rather, scripts have various distinguishing characteristics as compared to object-oriented structures, such as an "instantiated agent object operable to monitor hardware characteristics of the network device," as recited in claim 1, for example. For example, Scarpelli acknowledges distinctions between scripts and object-oriented programs, indicating that devices or applications may be defined as objects. The programs that monitor the devices

or applications, however, are script-based, not objects instantiated from an object class, as recited in claim 1, for example.

For at least the reason that the scripts disclosed in Scarpelli are not objects that can be instantiated, Scarpelli fails to teach or suggest "instantiating an agent object . . . , the instantiated agent object operable to monitor hardware characteristics of the network device," as recited in claim 1, for example. Lavian fails to cure this deficiency of Scarpelli. For at least this reason, the references relied upon, either alone or in combination, fail to teach or suggest every feature of claim 1. Accordingly, the rejection is improper and must be withdrawn.

Claims 9, 17, and 25 include features similar to those set forth in claim 1. Claims 2-8, 10-16, 18-24, and 26-27 depend from and add features to one of claims 1, 9, 17, or 25. Thus, the rejections of these claims are likewise improper and must be withdrawn for at least the same reasons.

Applicants further note that the arguments presented herein were also raised in the Response dated August 22, 2006. In the present Office Action, the Examiner indicates that "the previous non-final rejection is withdrawn." Office Action at 2. Further, the Examiner notes that "Applicant's arguments with respect to claims 1-27 have been considered but are moot in view of the new ground(s) of rejection." Office Action at 9. The grounds of rejection presented in the outstanding Office Action, however, are the same grounds of rejection presented in the Office Action mailed May 23, 2006. The Examiner has therefore neither withdrawn the previous rejection nor presented new grounds of rejection; rather, the Examiner presents the same grounds of rejection, while failing to properly consider Applicant's arguments addressing the deficiency of the rejection. This is improper, and the Examiner must withdraw the rejection based on the combination of Scarpelli and Lavian for at least the reasons presented herein.

## CONCLUSION

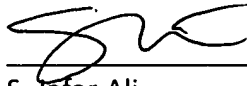
Having addressed each of the foregoing rejections, it is respectfully submitted that a full and complete response has been made to the outstanding Office Action and, as such, the application is in condition for allowance. Notice to that effect is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

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Respectfully submitted,

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